



JON M. HUNTSMAN, JR.  
*Governor*

GARY R. HERBERT  
*Lieutenant Governor*

# State of Utah

## DEPARTMENT OF NATURAL RESOURCES


MICHAEL R. STYLER  
*Executive Director*


### Division of Oil, Gas and Mining

JOHN R. BAZA  
*Division Director*

March 15, 2010

TO: Board of Oil, Gas & Mining

THROUGH: John R. Baza, Director 

FROM: Steve Schneider, Administrative Services & Policy Coordinator 

SUBJECT: Status on Informal Rulemaking for Valid Existing Rights in Coal Program

This memorandum is written to update the Board on the status of the informal rulemaking process on valid existing rights ("VER") in the Coal Program. The formal rulemaking process is ready to commence after the briefing to the Board on March 24, 2010.

In review, the Division provided draft VER rules and a historical recap of VER rulemaking to the Board at the January 27, 2010 briefing. On January 28, 2010, the Division provided the draft rules to the Informal Rules Review Group and requested a reply by March 9, 2010, as attached. A letter of support of the rulemaking was received from the Utah Mining Association (UMA), and the Office of Surface Mining (OSM) was in support, subject to one small change. Both response letters are attached for your reference.

The Division worked with OSM and UMA to solve the concern identified in the OSM letter. The attached one page edit to Rule R645-103-227 corrects the specified terminology, and this solution is acceptable to UMA and OSM. Unless there are objections raised at the March 24, 2010 briefing, the Division is ready to commence formal rulemaking by the filing of a petition to the Board by April 10, 2010.

Thereafter, the Board could initially hear the formal matter on May 26, 2010, the Division would submit the rules filing to the Division of Administrative Rules by June 1, 2010, and formal public comment could occur on June 23, 2010.

I will be available to answer questions at the Board briefing on March 24, 2010 or I can be reached at 801-538-5328.

Attachments



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# State of Utah

## DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER  
Executive Director

### Division of Oil, Gas and Mining

JOHN R. BAZA  
Division Director

January 28, 2010

TO: Informal Rules Review Group

THROUGH: John R. Baza, Director *JRB*

FROM: Steve Schneider, Administrative Services & Policy Coordinator *Steve*

SUBJECT: Solicitation of Comments on Coal Rule Amendments on Valid Existing Rights, Informal Rulemaking Process

This letter is written to seek your comments on a Coal Program rule proposal pertaining to valid existing rights, as part of the informal rulemaking process. This rulemaking was requested by the Office of Surface Mining ("OSM") in 2008 to be as effective as federal regulations which were passed as final rule on December 17, 1999.

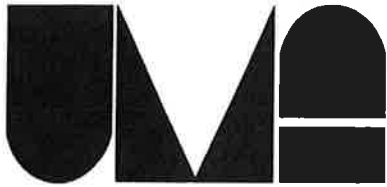
The Board of Oil, Gas & Mining was originally briefed on September 28, 2008 and were also briefed on January 27, 2010 prior to this rule proposal proceeding to the Informal Rules Review Group for comments. The Division has worked extensively with OSM to develop these draft rules to be as effective as federal regulation. Each state rule amendment is cross-referenced to the counterpart federal regulation for your benefit.

Please take this opportunity to review this proposal and provide a response to Steve Schneider by **March 9, 2010**, if you desire. Consideration will be made of your comments prior to proceeding with formal rulemaking with the Board. I can be reached by e-mail at [steveschneider@utah.gov](mailto:steveschneider@utah.gov) or by telephone at 801-538-5328 if you have any questions.

Thank you in advance for your consideration of this matter.

Attachment





# Utah Mining Association

136 SOUTH MAIN STREET, SUITE 709

SALT LAKE CITY, UTAH 84101-1672

TEL: (801)364-1874 FAX: (801) 364-2640

E-mail: [mining@xmission.com](mailto:mining@xmission.com) Website: [www.utahmining.org](http://www.utahmining.org)

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March 8, 2010

Steve Schneider, Administrative Services & Policy Coordinator  
State of Utah  
Division of Oil Gas & Mining  
P.O. Box 145801  
Salt Lake City, Utah 84114-5801

Re: Solicitation of Comments on Coal Rule Amendments on Valid Existing Rights, Informal Rulemaking Process

Dear Mr. Schneider:

I am writing on behalf of the Utah Mining Association to respond to your Memo dated January 28, 2010, soliciting comments on the proposed rules regarding valid existing rights. The environmental subcommittee of the Utah Coal Operators Committee of the Utah Mining Association has reviewed the Draft VER Rules as submitted with your Memo. The Subcommittee is supportive of moving forward with the rulemaking process in order to insure that Utah's rules conform to the rules promulgated by the Office of Surface Mining Reclamation and Enforcement in 1999.

We appreciate the opportunity to participate in the informal review group and look forward to working with you as these proposed rules move forward in the formal rulemaking process.

Please let us know if we can be of any further assistance.

Sincerely,

Todd Bingham  
President

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DIV. OF OIL, GAS & MINING



## United States Department of the Interior

### OFFICE OF SURFACE MINING

Reclamation and Enforcement

Western Region Office

1999 Broadway, Suite 3320

Denver, CO 80202-3050



0 5 MAR 2010

Steve Schneider  
Administrative Services and Policy Coordinator  
Utah Division of Oil, Gas, and Mining  
1594 West North Temple, Suite 1210  
Salt Lake City, Utah 84116

Dear Mr. Schneider,

The Office of Surface Mining Reclamation and Enforcement (OSM) has completed review of Utah's January 28, 2010, informally-proposed amendment (State Program Amendment Tracking System (SATS) No. UT-047-INF). The amendment was submitted in response to OSM's February 1, 2008 732 letter requiring rule changes in response to Federal rulemaking pertaining to Valid Existing Rights. We offer the following comments on your informal submittal.

In R645-103-237 you reference the Federal definition of "significant recreational, timber, economic, or other values incompatible with surface coal mining and reclamation operations" at 30 CFR 761.5. The definition at 30 CFR 761.5 is for "significant recreational, timber, economic or other values incompatible with **surface coal mining operations**" (does not include "and reclamation" in the phrase). You have a definition of "significant recreational, timber, economic or other values incompatible with **coal mining and reclamation operations**" (excluding "surface" and including "and reclamation" in the phrase) under R645-100-200. Either definition could be employed, but the phrase used in the regulation should match the referenced definition.

R645-300-133.1000 references the permit eligibility review under R645-300-100 through R645-300-132.300. This range of regulations is no longer as effective as the counterparts at 30 CFR 773.7 through 773.14 due to the Ownership and Control rule changes. This will be addressed through a separate rule making package (no additional change necessary in this package).

This amendment package appears to meet all requirements addressed in OSM's February 1, 2008 732 letter. Please notify me as to when you will formally submit this amendment to OSM.

We are available to meet with you to discuss our review findings or any matters of concern regarding the proposed amendment. If you have any questions, please call me at 303-293-5015 or Christine Belka, Environmental Protection Specialist, at 303-293-5020.

Sincerely,

James F. Fulton, Chief  
Denver Field Division

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DIV. OF OIL, GAS & MINING  
(E-Mail Rec'd 3/5/2010.)

236. Where the Division determines that the proposed coal mining and reclamation operation will adversely affect any publicly owned park or any place included in the National Register of Historic Places, the Division will transmit to the federal, Utah, or local agency with jurisdiction over the publicly owned park or National Register place, a copy of applicable parts of the permit application, together with a request for that agency's approval or disapproval of the activity, and a notice to that agency that it has 30 days from receipt of the request within which to respond and that failure to interpose a timely objection will constitute approval. The Division, upon request by the appropriate agency, may grant an extension to the 30-day period of an additional 30 days. Failure to interpose an objection within 30 days, or the extended period granted, will constitute an approval of the proposed permit. A permit for the coal mining and reclamation operation will not be issued unless jointly approved by all agencies. The procedures for joint approval will not apply to lands for which a person has VER as determined under R645-103-231.100 and lands within the scope of the exception for existing operations in R645-103-225.

**Comment [S17]:** Basis is 761.17(d)(3) on public parks.

237. If the applicant intends to rely upon the exception provided in R645-103-224.200 to conduct coal mining and reclamation operations on federal lands within a national forest, the applicant must request that the Division obtain the Secretarial findings required by R645-103-224.200. The applicant may submit a request to the Division before preparing and submitting an application for a permit or boundary revision on Federal lands in national forests. The applicant must explain how the proposed operation would not damage the values listed in the definition of "significant recreational, timber, economic, or other values incompatible with surface coal mining and reclamation operations" in 30 CFR 761.5. The applicant must include a map and sufficient information about the nature of the proposed operation for the Secretary to make adequately documented findings. The Division may request that the permit applicant provide additional information that the Division determines is necessary in order to make the required findings. When a proposed coal mining and reclamation operation or proposed boundary revision for an existing coal mining and reclamation operation includes federal lands within a national forest, the Division may not issue the permit or approve the boundary revision before the Secretary makes the findings required by R645-103-224.200.

**Comment [S18]:** Basis is new 761.13 which revised and replaced former 761.12(c) on federal lands in nation forest matters. R645-103-223 could be removed but it is general and currently retained.

**Comment [S19]:** \*\* 3/15/10: Correction to proper term, per OSM 3/5/10 letter.

~~[237]~~238. If the Division determines that the proposed coal mining and reclamation operation is not prohibited under Section 40-10-24 of the Act and R645-103-200, it may nevertheless, pursuant to appropriate petitions, designate such lands as unsuitable for all or certain types of coal mining and reclamation operations pursuant to R645-103-300 and R645-103-400.

**Comment [S20]:** Renumbered due to the insert of new 237.

~~[238]~~239. A determination by the Division that a person holds or does not hold valid existing rights ~~[or that coal mining and reclamation operations did or did not exist on the date of enactment]~~ will be subject to administrative and judicial review under R645-300-200.

**Comment [S21]:** Renumbered due to the insert of new 237. Text edited due to 761.16(f).

240. Interpretative Rule. As set forth in the interpretative rule found at 30 CFR 761.200, subsidence due to underground coal mining is not included in the definition of surface coal mining operations under Section 701(28) of the Federal Act and Subsection 40-10-3(20) of the Act and therefore is not prohibited in areas protected under Section 522(e) of the Federal Act.

**Comment [S22]:** Added to match federal regulation at 30 CFR 761.200 which became a Final Rule on the same day as VER amendments (12/17/99).

## **R645. Natural Resources; Oil, Gas and Mining; Coal.**

### **R645-201. Coal Exploration: Requirements for Exploration Approval.**

#### **R645-201-300. Major Coal Exploration Permits.**

310. Any person who intends to conduct coal exploration in which more than 250 tons of coal will be removed in the area to be explored or which will take place on lands designated as unsuitable for coal mining and reclamation operations under R645-103, will, prior to conducting the exploration, submit an application for a Major Coal Exploration Permit and obtain written approval from the Division.

320. Contents of Major Coal Exploration Permit Applications. Each application for a Major Coal Exploration Permit approval will contain, at a minimum, the following information: